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MRP.
6/7/56.

Office of the R.L.A.

The first paragraph of the proviso to section 17(2) of the Bombay Village Panchayats Act, 1933, provides that when no meeting for the election of a Sarpanch has been called by the retiring Sarpanch on the date fixed under sub-section (1) of section 12 or if a meeting called by him for this purpose on the aforesaid date has not been attended by him, the president of the district local board shall proceed to convene a meeting of the panchayat in the manner described in sub-section (1) and a new Sarpanch shall be elected accordingly.

The second paragraph lays down:

> "If the president of the district local board fails to convene such meeting within a period of 15 days from the date fixed under sub-section (1) of section 12 the Collector himself shall convene such meeting. The president of the district local board or the Collector, as the case may be, shall nominate one of the members to preside at the meeting so convened. If the person so nominated fails to preside at the meeting the members present shall elect one of them to preside."

~~Thus~~ The proviso to be read as a whole. The first paragraph of the proviso empowers the president of the district local board to convene a meeting but does not specify the authority to preside at such meeting. The first part of paragraph 2 of the proviso empowers the Collector to convene a meeting if the president makes default in calling it within the time stipulated. Then the penultimate sentence

provides ....

provides for nominating the authority to preside at the meeting called either by the President under the first paragraph or by the Collector under the first part of the second paragraph of the proviso. The words "as the case may be" clearly support the aforesaid interpretation. The interpretation put upon the second paragraph of the proviso by the Commissioner and the Secretary, General Department that either the Collector or the President of the district local board nominate a member to preside at a meeting convened by the Collector is not correct. The President of the district local board can nominate a member to preside at a meeting called by him while the Collector can do so only when the meeting is convened by him.

Sd. P.N.Moos
14/1/46
Remembrancer of Legal Affairs.

U.R.to G.D.,No.339, dated the 15th January 1946.

MRP.
6/7/56.

Office of the R.L.A.

It appears that in the meeting of the village Bench, Kavi, convened on 10-5-1945 for the purpose of electing a new Chairman the Sarpanch who had called the meeting was absent and the Deputy Sarpanch who was a member of the Bench Presided over the meeting and a new Chairman was elected. The question for the consideration of the R.L.A. is whether the election of the new Chairman of the Bench is invalid.

2. Section 37A of the Bombay Village Panchayats Act, 1933, provides:

> "Every village bench shall have a Chairman. The Chairman shall be elected by the bench from amongst members of the bench and the term of office of the Chairman of such bench shall be co-extensive with the term of the bench."

The procedure for the election of the Chairman is prescribed by the rules. Rule 7A of the Bombay Village Bench Rules, 1940, provides that the Sarpanch shall preside over that meeting (i.e.a meeting of the bench for the purpose of electing its Chairman) until the Chairman has been elected. Rule 7C lays down that if the Sarpanch is unable, or, for any reason fails to preside over the meeting the members present shall elect from amongst themselves a Chairman for the meeting and such Chairman shall preside over the meeting until the Chairman of the Bench has been elected. It is manifest from these provisions that since the Sarpanch was absent the members of the Village Bench, Kavi, could have elected from amongst themselves a Chairman for the meeting, which they did not do. It is not doubt true

that the...

that the Deputy Sarpanch was one of the members of the Bench. But since he was not elected by the members of the Bench as provided in rule 7C, the meeting presided over by him was not valid (see Aiyangar's Municipal Corporations in British India, p.148). It is however contended that there was no need for electing the Deputy Sarpanch to preside over the meeting under rule 7C since by virtue of power vested under section 20 of the Bombay Village Panchayats Act he could exercise the powers of the Sarpanch under rule 7A. That contention does not appear to be valid.

Section 20 of the Bombay Village Panchayats Act provides:

> "The executive power for the purpose of carrying out the provisions of this Act and the resolutions passed by a panchayat vests in the Sarpanch who shall be directly responsible for the due fulfilment of the duties imposed upon the Panchayat by or under this Act. In the absence of the Sarpanch the powers and duties of the Sarpanch shall, save as may be otherwise prescribed by by-laws, be exercised and performed by the Deputy Sarpanch."

"Powers and duties" mean executive powers and duties. To preside over the meeting of the village bench convened for the purpose of electing its Chairman under rule 7, is not an executive power or duty of the Sarpanch under the Bombay Village Panchayats Act. Section 20 will have, therefore, no application to the present

case ....

case. Consequently the Deputy Sarpanch in the present case could not exercise the power of the Sarpanch under rule 7A. In the circumstance, the election of the Chairman of the village Bench, Kavi, at its meeting presided over by the Deputy Sarpanch is invalid. The view taken by the President, District Local Board, Broach, is correct.

Id. P.N.M.
24/1/46
Remembrancer of Legal Affairs.

U.R.to G.D.,No.714,dated the 26th January 1946.

MRP.
7/7/56.

Office of the R.L.A.

By General Department Notification No.S.174(1)(a), dated the 1st November 1940 Government in exercise of the powers conferred by sub-section (1) of section 122 of the Bombay Village Panchayats Act, 1933, authorised the Commissioners of Divisions to make rules under clause (m) of sub-section (1) of section 108 of the said Act prescribing the house-tax leviable by the Panchayats constituted for the areas within their respective jurisdiction subject to the condition that the rate to be prescribed by the Commissioners in the case of any panchayat shall not be lower than the minimum rate or higher than the maximum rate specified below:-

	Minimum rate.	Maximum rate.
(a) For tax based on capital valuation of the buildings and lands.	2 annas per Rs.100 of the capital valuation.	4 annas per Rs.100 of the capital valuation.
(b) For tax based on letting value of the buildings and lands.	4 per cent. of the annual letting value.	8 per cent. on the annual letting value.

The Commissioners accordingly framed rules. Rule 2 of these rules provides "every panchayat mentioned in column 1 of the Schedule hereto annexed shall levy a tax on the owners or occupiers of houses and lands within the limits of the village at the rates specified opposite to it in column 2 of the

said ...

said Schedule". The Schedule runs thus:-

Schedule.

Name of the District.	Name of the Village Panchayat.	Rate specified under rule 2.
All districts.	All village panchayats.	In the case of panchayats which already levy house tax, the rate in force on the day before the application of these rates subject to the maximum prescribed in Government Notification, General Department Nos.174/1(a), dated 1st November 1940. In the case of all other Panchayats a rate of 2 annas per Rs.100 of the capital valuation.

On a reasonable interpretation, the words "subject to the maximum prescribed in Government Notification, General Department No,S.174/1(a), dated 1st November 1940" can only mean that if the rate already in force is above the maximum prescribed the panchayat can levy only the maximum rate. Since the Village Panchayat, konnur, in the present casem was already levying house-tax at the rate of 0-2-6 per Rs.100 of the capital valuation, which rate is less than the maximum prescribed by the Government notification, it would not be competent for that Panchayat to levy the house-tax at a rate higher than 0-2-6 per Rs.100 of the captial valuation unless the Schedule to the rules is suitably amended.

2. Sub-section (1) of section 90 provides:

> (1) If in the opinion of the district local board the regular income of a panchayat fall below what is necessary for the proper discharge of the duties specified in sections 26 and 28, the district local board may require the panchayat to take steps,

within ...

within six months, to increase its income to such extent as the district local board considers necessary. If the panchayat fails to take adequate steps to increase its income to the required extent, the district local board may require it to levy or increase any of the taxes or fees specified in section 89:

Provided that the district local board shall not compel the panchayat to levy or increase any tax or fees beyond the maximum rate to be prescribed in this behalf."

and sub-section (2) provides:

"(2) Any panchayat may appeal to the Commissioner against an order made under sub-section (1) and the Commissioner may stay the execution of such order until he had decided the appeal."

These provisions override rule 2 and the Schedule. The effect of these provisions is that notwithstanding the rates prescribed in the Schedule to the rules framed by the Commissioners a district local board, on being satisfied that the panchayat has failed to take steps to increase its income by levy of other taxes, can require it to increase any tax or fee up to the maximum rate prescribed. Consequently the Village Panchayat, Kc[illegible], cannot raise its house-tax unless either the Schedule to the rules framed by the Commissioners is suitably amended or the district local board requires it so to do under section 90(1) of the Bombay Village Panchayats Act. The view taken by G.D. is not correct.

Id. P.N.M.
30/1/46.
Remembrancer of Legal Affairs.

U.R.to G.D.,No.856, dated 31st January 1945.

MRP.
7/7/56.

Office of the R.L.A.

Under section 6(1) of the Bombay Village Panchayats Act, 1933, the officiating revenue patel and the police patel in the village are members of a panchayat. If in virtue of the power delegated to them under Government Notification No.4874/33 dated 16-10-1942 the village panchayats appoint the revenue and the police patels as pound-keepers under section 6 of the Cattle-trespass Act, 1871, they will incur disqualification under clause (g) of section 8 of the Village Panchayats Act. If the intention is that the revenue and police patels should not incur such disqualification on their appointment as pound-keepers it will be necessary to amend the Act. The view taken by G.D. is correct.

Id. P.N.M.
5/4/46
Remembrancer of Legal Affairs.

U.R.to G.D.,No.2609,dated the 5th April 1946.

MRP.